IN THE HIGH COURT OF JUDICTURE FOR RAJASTHAN AT

JODHPUR.

O R D E R

Pema & Anr. Versus State of Rajasthan & Anr.

S.B. Civil Writ Petition No.1723/2005

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Date of Order: February 01, 2007

PRESENT

HON'BLE MR. JUSTICE H.R. PANWAR

Mr.R.S. Saluja, for the petitioners.
Mr. Rameshwar Dave, Deputy Govt. Advocate.

BY THE COURT:

By the instant writ petition under Article 226 of the Constitution of India, the petitioners have impugned the Award Annx.4 dated 12-2-2001 made by the non-petitioner No.2, the Judge, Industrial Disputes Tribunal and Labour Court, Udaipur (for short, "the Labour Court" hereinafter), whereby on a reference being made to the Labour Court by the State Government under Section 10 of the Industrial Disputes Act, 1947 (for short, "the I.D. Act, 1947" hereinafter), the Labour Court held that the termination of services of the workman-

petitioner No.1 Pema with effect from 1-9-1990 was illegal and invalid; however, instead of granting him the relief of reinstatement, the Labour Court awarded compensation of Rs.28,000/- in lieu of reinstatement with the direction to pay the compensation within three months, else it would carry interest @ 12% per annum. So far as workman-petitioner No.2 Bhaga is concerned, he did not appear before the Labour Court as a witness and, therefore, the Labour Court held that it can be said that workman-petitioner No.2 Bhaga had left the work at his own and, therefore, he is not entitled for any relief.

A reply to the writ petition has been filed by the non-petitioner No.1 denying the case of the petitioners regarding their appointment on the post of Beldar and came with the case that the daily rated labourers were engaged and the petitioners were also daily rated workers engaged as and when the need arose for that purpose and they were paid the wages for the work done by them as paid to the other similarly situated daily rated labourers. However, it came with the case that the services of workmen-petitioners were not terminated but they themselves left the service and did not join at their own accord and as such they abandoned the job.

Various material facts were brought on record before the Labour Court which have not been disputed, more

particularly the fact that the petitioner-workman No. 1 had completed 240 days in a calendar year and, therefore, in my view, the Labour Court was justified in holding the termination of service of workman-petitioner No.1 as invalid and illegal. The finding of fact arrived at by the Labour Court is based on sound and reliable evidence. More so, the same has not been assailed by the employer as the award Annx.4 has not been challenged by the non-petitioner.

It is contended by the learned counsel for the petitioners that the Labour Court fell in error in awarding compensation in lieu of reinstatement, more particularly when it has been established that the termination of services of the petitioner-workmen was in violation of the provisions of Section 25-F of the I.D. Act, 1947, therefore, the workmen were entitled for reinstatement in service instead of compensation. In the alternative, learned counsel submits that the compensation awarded by the Labour Court in lieu of reinstatement is much on the lower side and inadequate and, therefore, deserves to be enhanced.

Learned Deputy Government Advocate appearing for the non-petitioner submits that the services of the petitioners were terminated in the year 1990 and since then a long period has elapsed and in view of the decisions of the Hon'ble Supreme Court, compensation in lieu of reinstatement is the adequate

remedy.

I have given my thoughtful consideration to the rival submissions made by the learned counsel for the parties.

In Punjab Land Development and Reclamation Corporation Ltd., Chandigarh Vs. The Presiding Officer, Labour Court, Chandigarh & ors., 1990 (4) SLR 154, a Constitution Bench of the Hon'ble Apex Court held that compensation in lieu of reinstatement and back wages is now the norm.

In State of M.P. & ors. Vs. Arjun Lal Rajak,(2006) 2 SCC 711, the Hon'ble Supreme Court held that it is beyond any doubt or dispute that a daily-wager does not hold a post. The Forest Department is a wing of the State. Its employees hold a status. For acquiring that status and for obtaining a Constitutional protection in terms of Article 311 of the Constitution of India, all appointments must be made in conformity with the Constitutional scheme as laid down under Articles 14 and 16 of the Constitution as well as the rules made in terms of the proviso to Article 309 of the Constitution or in terms of a legislative Act. Concededly, while appointing the respondent, the Constitutional provision or the statutory provisions had not been followed. The rights and liabilities of the parties are, therefore, governed by the terms of the contract and/or the provisions of the statute applicable in relation thereto. The respondent was not given any offer of appointment in

writing. He admittedly worked in different departments of the State. His last posting was in the production division of the Forest Department in the district of Guna which as noticed above stood abolished. It is, however, true that while terminating the services of the respondent, the appellants had not complied with the mandatory requirements of Section 25-F of the Industrial Disputes Act and, thus, ordinarily, the workman could have been directed to be reinstated with or without back wages, but it is also well settled that when a project or a scheme or an office itself is abolished, relief by way of reinstatement is not granted. Accordingly, keeping in view the fact that the services of the respondent therein were terminated on the ground that the production unit in which he was working itself had been closed, the Hon'ble Supreme Court awarded monetary compensation of Rs.10,000/- to the workman.

In Nagar Mahapalika (Now Municipal Corporation) Vs. State of U.P. & ors., (2006) 5 SCC 127, the Hon'ble Supreme Court, finding the appointment of the workman therein in violation of the U.P. Mahapalika Adhiniyam, 1959, held that since the provisions of the U.P. Industrial Dispute Act, 1947 had not been complied, instead and in place of issuing a direction for reinstatement of service, interests of justice would be subserved if a compensation of Rs.30,000/- is directed to be paid.

In Rattan Singh Vs. Union of India & ors., (1997) 11

SCC 396, where termination of services of the workman was made without complying with the provisions of Section 25-F of the Industrial Disputes Act, 1947, the Supreme Court, ordered payment of Rs. 25,000/- as compensation in lieu of reinstatement and back wages. In this regard, the Apex Court observed as under:-

> "We find merit in the said submission of Shri Ashri. From the dates mentioned in the judgment of the First Appellate Court dated 21-1-1985, it appear that the appellant had continuously worked for more than 240 days in a year. Since he was a workman, he was entitled to the protection of Section 25-F of the Act and the said protection could not be denied to him on the ground that he was a daily-rated worker. It is not the case of the respondents that the provisions of Section 25-F of the Act were complied with while terminating the services of the appellant. In these circumstances, the termination of services of the appellant cannot be upheld and has to be set aside. The services of the appellant were terminated in the year 1976. Nearly 20 years have elapsed since then. In these circumstances, we are not inclined to direct reinstatement of the appellant. But having regard to the facts and circumstances of the case, we direct that a consolidated sum of Rs.25,000/- be paid to the appellant in lieu of compensation for back wages as well as reinstatement. This amount is being paid in full and final settlement of all the claims of the appellant. The said amount shall be paid within two months. The appeal is disposed of accordingly. No costs."

The Division Bench of this Court, in State of Rajasthan Vs. Rashid Mohammed, 2004 (5) WLC (Raj.) 463, while dealing with a case where respondent Rashid Mohammed was appointed as a Guard on daily wages basis on 01-2-1990

and was finally removed on 17-5-1994 and taking into consideration the facts that already nine years have elapsed, modified the judgment of the learned Single Judge by directing that instead of reinstatement, the respondent would be entitled to a lump-sum amount of Rs.50,000/- as compensation for full and final settlement of all his claims while relying on the decisions of the Hon'ble Supreme Court in Hindustan Tin Works Pvt. Ltd Vs. Employees of Hindustan Tin Works Pvt. Ltd., AIR 1979 SC 95; Chandu Lal Vs. The Management of M/s. PAN American World Airways, AIR 1985 SC 1128; Gujarat State Road Transport Corporation & Anr. Vs. Malu Amra, AIR 1994 SC 112; Sain Steel Products Vs. Naipal Singh & ors., AIR 2001 SCW 2426; O.P. Bhandari Vs. Indian Tourism Development Corporation Ltd. & ors., (1986) 4 SCC 337; and Rolston Johan Vs. Central Government Industrial Tribunal and Labour Court & ors., AIR 1994 SC 131.

In view of the settled legal proposition and the facts and circumstances of the case, the relief of compensation in lieu of reinstatement granted by the Labour Court is just, proper and appropriate. However, the amount of compensation awarded by the Labour Court requires enhancement.

In the result, the writ petition filed by petitioner No.1 Pema S/o Shri Daula is allowed to the extent that the compensation awarded by the Labour Court in favour of

petitioner No.1 is enhanced from Rs.28,000/- to Rs.50,000/-. The writ petition filed by petitioner No.2 Bhaga S/o Shri Bala is dismissed. There shall be no order as to costs.

(H.R. PANWAR), J.

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